

SERVICE DATE – APRIL 11, 2019

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 788X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN PRESTON COUNTY, W. VA.

Decided: April 10, 2019

On February 21, 2019, CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 6.78-mile rail line between milepost BAJ 3.0 and milepost BAJ 9.78 in Preston County, W. Va. (the Line). Notice of the exemption was served and published in the Federal Register on March 13, 2019 (84 Fed. Reg. 9200). The exemption is scheduled to become effective on April 12, 2019.

The Board's Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) on March 18, 2019, solicited public comments, and issued a Final EA on April 3, 2019. No environmental or historic preservation issues have been raised by any party or identified by OEA. Accordingly, a finding of no significant impact under 49 C.F.R. § 1105.10(g) will be made pursuant to 49 C.F.R. § 1011.7(a)(2)(ix).

In the EA, OEA also stated that the right-of-way may be suitable for other public use following the abandonment and salvage of the Line. On March 20, 2019, the West Virginia State Railway Authority (WVSRA) filed a request for issuance of a notice of interim trail use or abandonment (NITU) under the National Trails Systems Act (Trails Act), 16 U.S.C. § 1247(d). WVSRA also submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on March 20, 2019, CSXT notified the Board that it is willing to negotiate an agreement for interim trail use with WVSRA.

Because WVSRA's request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, CSXT may fully abandon the Line. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

It is ordered:

1. This proceeding is reopened.
2. Abandonment of the Line will have no significant effect on the quality of the human environment and conservation of energy resources or on historic resources.
3. Upon reconsideration, the notice served and published in the Federal Register on March 13, 2019, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit WVSRA to negotiate with CSXT for trail use for the Line for a period of 180 days from the service date of this decision and notice, until October 8, 2019.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.
6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).
7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
8. If an agreement for interim trail use/rail banking is reached by October 8, 2019, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line.
9. This decision is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.